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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,308	09/02/2005	David Falkiner Wallace	P70635US0	1235

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WASHINGTON, DC 20004

EXAMINER
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ENGLE, PATRICIA LYNN

ART UNIT	PAPER NUMBER
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3673

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01/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/537,308	WALLACE, DAVID FALKINER
	Examiner Mark A. Williams	Art Unit 3673

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 31 August 2007.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5, 7-9, 11, 13, 15-19, 23, 25, 27, 28, 30, 34-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5, 7-9, 11, 13, 15-19, 23, 25, 27, 28, 30, 34-36 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

The claims create a subcombination/combination issue in that it is not clear if applicant is claiming just the subcombination of a "fastening apparatus" or the entire combination of a "fastening apparatus", a "closure means", and a "surface". Applicant has stated that only the subcombination is intended to be positively claimed, yet the claim language directed to "fixed to said surface" and "fixed to said closure means" suggest positively recitation of the entire combination. Applicant must again clarify his intent and amend the claims to be consistent with that intent. For example, language such as --adapted to be fixed to-- may be more appropriate for claiming just the subcombination. For purposes of this Office action, the examiner is considering only the subcombination of a fastening apparatus being positively claimed.

In claim 34, there is a lack of antecedent basis for "said notched section" and "said closure notch".

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 7-9, 11, 13, 15, 16, 18, 19, 23, 25, 27, 28, 30, 34, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Newton, US Patent 1,126,836. A fastening apparatus for use with a closure means, including a latch (shown in figure 1) configured to receive a catch K that is attached to a closure means, characterized in that the latch includes a lever H attached to a release mechanism for the fastening apparatus wherein said lever extends outwards from the closure means when the closure means is held in the open position and there is a cushioning apparatus D intermediate of the latch and the closure means, said cushioning apparatus cushioning by contact with said closure means with respect to said latch. The latch includes a back-plate (G, A, a), with at least planar portion G, for fixing the latch to a preferred surface. The lever is centrally pivoted with respect to the back-plate. The release mechanism includes a notched section of the lever (near j). The lever rotates about an axis that is perpendicular to at least a portion of the black plate G. The notched section is angled in a substantially

perpendicular plane with respect to the back-plate in order to effect the required distance between the surface to which the back-plate is affixed and the closure means when the catch and the latch are engaged. The notched section includes at least one notch for engaging with a complementary catch. The latch is released from the catch by the application of pressure to the opposite distal end of the lever with respect to the notched section. The latch retains said cushioning apparatus. The cushioning apparatus is positioned to extend in a substantially perpendicular plane with respect to the back-plate to contact the closure means when the closure means is secured by the fastening apparatus. The catch is configured to be able to engage with the notched section on the complimentary latch. The latch is configured such that it can be used with either a left handed or right handed opening closure means. The catch is configured to be substantially U-shaped (looking at figure 5, at least part of the rectangular opening forms a substantial U shape). The catch is configured to receive an attachment k to secure the catch against the closure means. The catch includes an attachment apparatus (k, k') to secure the catch against a closure means. The notched section of the lever is located towards the leading distal end of the lever and a handle is located towards the trailing distal end of the lever. The notched section is configured to be substantially right-angled to the axis of the lever. A biasing means h is located

substantially centrally to the lever. The biasing means is a spring. The biasing means is attached to the lever at the point at which the lever is attached to the back-plate. One end of the biasing means is attached to the lever while the other end of the biasing means is attached to the back-plate (at h4). The biasing means is positioned to effect a pivotal movement on the lever through a substantially vertical plane. The biasing means ensures that the leading distal edge of the latch is biased downwards from the horizontal when the latch is not engaged with the catch. The biasing means exerts a positive pressure in a substantially downward direction onto the catch when the catch is engaged with the latch. The latch inherently includes a restraint device (or feature) that is configured as a substantially angled portion h5 of the back-plate that limits the upward rotational movement of the trailing distal end of the lever past a pre-defined point. The cushioning apparatus is positioned substantially over the point of attachment of the biasing means and the lever to the back-plate. The cushioning apparatus is constructed of a material that exhibits elastic deformation under the application of direct pressure. The cushioning apparatus operates as a positive stop against the closure means. The cushioning apparatus operates as a movement damping device against the closure means. The handle of the lever is configured to have at least a partially smooth textured surface.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newton. Although a low friction material or textured surface is not explicitly taught, the examiner serves Official Notice that it is old and well known in the art of such lever/handle devices to include such structure, for the purpose of enhanced gripping. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device in this way, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331. Such a modification may have added the benefit of enhanced gripping of the lever/handle device.

4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newton in view of US Patent 284,336 to Scranton. Newton does not provide notches on both the upper and lower surfaces. Scranton teaches this concept, for use with a particular type of catch structure. It would have been obvious at the time the invention was made for one skilled in the art to have modified the device in this way, for the purpose of allowing for the device to be used with a particular type of catch structure.

***Response to Arguments***

5. Applicant's arguments filed 8/31/07 have been fully considered but they are not persuasive.

Applicant argues that the claimed invention has a different rotational axis for the lever than the applied art; and that the latch that engages the catch does not lie in the plane of the planar back plane. However, when taking element G as being part of back plate, the claim limitations are clearly met. Applicant has not sufficiently limited the claimed invention so as to overcome the applied art.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Williams whose telephone number is (571) 272-7064. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on (571) 272-6660. The fax

phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mark Williams  
11/24/07

*MW*

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